

### REMARKS

Claims 26, 33-46 and 49 are currently pending. The subject matter of Claim 50 is incorporated into Claims 26, 33 and 49 and Claim 50 is canceled. No new matter has been added herewith.

Applicants wish to note that former Claim 50 was multiply dependent on each of Claims 26 and 49. The Examiner indicated that Claims 49-50 had been withdrawn from consideration as drawn to a non-elected invention. However, Applicants believe that this indication applied only to the portion of Claim 50 dependent on Claim 49. The portion of Claim 50 dependent on Claim 26 was properly drawn to the election invention. Accordingly, this portion of Claim 50 dependent on Claim 26 was properly before the Examiner prior to the present Amendment. Because the subject matter incorporation into Claim 26 was already pending prior to the present Amendment, new issues are believed to be raised that would bar consideration of the present Amendment after final. The following addresses the substance of the Office Action.

#### Anticipation

Claims 26, 33-34 and 36 were rejected under 35 U.S.C. § 102(b) as being anticipated by Rosen et al. (US Patent Application Publication No. 2002/0052308). In particular, Rosen et al. discloses SEQ ID NO: 143, a 1235 nucleotide sequence that comprises the presently claimed SEQ ID NO: 4, which is 876 nucleotides in length. Rosen et al. defines numerous "cancer associated polynucleotides" and the polypeptides encoded by these polynucleotides as "cancer antigens". Indeed, Rosen et al. discloses a total of 1694 sequences, which are supposedly cancer antigens. Confronted with such a laundry list, the skilled person would not know which of these sequences to select for use in detecting a breast cancer cell.

Claims 26, 33 and 49 are amended to recite methods relating to detection of breast cancer cells. In contrast, Rosen et al. does not disclose an association of SEQ ID NO: 4 with breast cancer. Instead, in combination with the first laundry list of 1694 nucleotide sequences, the skilled person is offered a second laundry list of hyperproliferative disorders in paragraphs [0429] and [0430] of Rosen et al., encompassing 150 types of cancers. Since Rosen et al. does not link SEQ ID NO: 4 with breast cancer, the reference does not anticipate each and every limitation of the claimed subject matter of the present application. Accordingly, removal of the rejection is respectfully requested.

Moreover, nothing in the Rosen et al. reference would even suggest the connection between SEQ ID NO: 4 (or a polynucleotide that encodes SEQ ID NO: 6 or a polynucleotide sequence having 95% identity to either of the foregoing) and breast cancer. Accordingly, the pending claims are believed to be patentable over the Rosen et al. reference.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

**CONCLUSION**

In view of Applicants' amendments to the Claims and the foregoing Remarks, it is respectfully submitted that the present application is in condition for allowance. Should the Examiner have any remaining concerns which might prevent the prompt allowance of the application, the Examiner is respectfully invited to contact the undersigned at the telephone number appearing below.

Application No.: 10/538,704  
Filing Date: February 21, 2006

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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